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PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ADMINISTRATOR.

The Supreme Court of Washington decides in *Noble* v. *Whitten*, 80 Pac. 451, that where an administrator appointed to settle an intestate's estate was an attorney, and had been the agent and attorney of the intestate, prior to her death, with reference to the management of her property, he was not entitled to an allowance for an attorney's services, the administration not being attended with any legal complications. Compare *Kuhn's Appeal*, 4 Wash. 534.

Compensation

The fact that one is hostile to the terms of a will, and sets up an adverse claim, does not render him incompetent to act as administrator with the will annexed, his bond as administrator affording protection to the persons interested: Supreme Court of Wyoming in *Rice* v. *Tilton*, 80 Pac. 828.

Competency

ADVERSE POSSESSION.

The Supreme Court of Texas decides in *Cobb* v. *Robinson*, 86 S. W. 746, that a dispute between two parties as to which of them was the owner of certain land—each claiming that the other was the owner, and basing their claims on opposed constructions of a deed executed by one to the other in alleged satisfaction of a mortgage—did not constitute an abandonment by either of them of all claim to the land so as to preclude the grantee subsequently adjudged to be the owner as against the other from availing himself of the possession of a tenant confessedly holding under the one or the other of them, in order to establish title by adverse possession. Compare *Blue* v. *Sayre*, 2 Dana, 213.

Abandonment

BENEFICIAL ASSOCIATIONS.

Restrictions on Action

The Supreme Court of Utah decides in *Pearson* v. *Anderburg*, 80 Pac. 307, that while members of a voluntary association may restrict themselves as to matters incidental to the operation of the association to remedies before tribunals created by the association, such restriction cannot extend to the right to benefits due the members under contract with the association, so as to require them to exhaust the remedy provided by the tribunals of the association as a condition precedent to suing for such benefits. Compare *Daniher* v. *Grand Lodge A. O. U. W.*, 10 Utah, 110.

CARRIERS.

Injuries to Passengers

The Supreme Judicial Court of Massachusetts decides in *Spinney* v. *Boston Elevated Ry. Co.*, 73 N. E. 1021, that the conduct of the conductor of a street-car while in the car is in a sense official conduct for which the street railway is responsible to a passenger injured thereby if such conduct—as in carelessly falling against the passenger and injuring him—is negligence, regardless of whether the conductor is in general competent or incompetent, or whether or not the street railway might reasonably know of his incompetency.

CHRISTIAN SCIENCE.

Practising Medicine

The Supreme Court of Ohio decides in *State* v. *Marble*, 73 N. E. 1063, that the giving of Christian Science treatment for a fee for the cure of disease is practising medicine within the meaning of the statutes regulating such practice in that state. It is further held that the statute making it a misdemeanor to give such treatment for a fee is not an interference with the rights of conscience and of worship, and is not on that ground unconstitutional; and that the act regulating the practice of medicine in the state merely exacts reasonable qualifications and excludes no one possessing them, and it is not void as discriminating against Christian Scientists in that it prescribes that anyone possessing certain qualifications may practise osteopathy and does not make especial provision for those

CHRISTIAN SCIENCE (Continued).

who wish to practise Christian Science. The courts seem practically unanimous in their attitude towards Christian Science. Compare *People* v. *Pearson*, 176 N. Y. 201.

CONSPIRACY.

The Supreme Court of Georgia decides in *Employing Printers' Club* v. *Doctor Blosser Co.*, 50 S. E. 353, that a combination of two or more persons to injure one in his trade by inducing his employees to break their contract with him, or to decline to continue longer in his employment, is, if it results in damages, actionable. The questions involved in this case are not new, but in view of the public importance of all decisions upon this subject it should not pass without notice. The court further holds in the same case that a former member of an illegal combination, whose connection with it was severed before the filing of the suit, will not be denied the protection of a court of equity against an illegal act of such combination because of his previous connection therewith. See also *Angle* v. *Chicago Ry. Co.*, 151 U. S. 1.

Right of Action

CONSTITUTIONAL LAW.

A statute of Kentucky passed in 1903 authorized persons committed for default of surety for good behavior or to keep the peace, and all others whom the city is bound to maintain when committed to jail, to be compelled to labor to defray the reasonable cost of their board. It is held by the Court of Appeals of the state in *Stone* v. *City of Paducah*, 86 S. W. 531, that this provision is in violation of the Thirteenth Amendment of the Federal Constitution forbidding involuntary servitude except as a punishment for crime, since under Kentucky law persons for whose support and maintenance the city was bound to provide for included idiots, insane persons, and inebriates, even though they had not been convicted of crime.

Involuntary Servitude

It is held, however, that the term "crime," as used in the Federal Constitution forbidding involuntary servitude ex-

CONSTITUTIONAL LAW (Continued).

cept as a punishment for crime, includes misdemeanors and all offences in violation of penal laws.

The Supreme Court of Kansas decides in *State* v. *White*, 80 Pac. 589, that the immunity from second jeopardy granted by the Constitution to one who is accused of crime is a personal privilege which he may waive, and if a person about to be placed in jeopardy a second time do not, in some legal form, insist upon his constitutional privilege before entering upon a trial of the merits, the privilege is waived. Compare *State* v. *Morrison*, 67 Kans. 144.

Former Jeopardy

It is held by the Supreme Court of Tennessee in *Battier* v. *State*, 86 S. W. 711, that an act prohibiting the running at large of hogs, sheep, and goats in counties having a population of not less than twenty-five thousand and not more than twenty-five thousand one hundred is not class legislation. Compare *Peterson* v. *State*, 104 Tenn. 128.

Class Legislation

CONTRACTS.

In *Crutchfield* v. *Rambo*, 86 S. W. 950, the Court of Civil Appeals of Texas holds that an agreement between holders of lottery tickets to divide their winnings is contrary to public policy and unenforceable. With this case compare *Patty-Joiner Co.* v. *Bank*, 41 S. W. 173.

Legality

In *Rapid Transit Ry. Co.* v. *Smith*, 86 S. W. 322, the Supreme Court of Texas decides that where a release of a claim for damages for personal injuries is procured by promises to give the releasor employment, which promises the other party has at the time no intention of performing, the release is voidable for fraud.

Release: Fraud

CONVERSION.

The Appellate Court of Indiana, Division No. 1, decides in *Crystal Ice and Coal Storage Co.* v. *Marion Gas Co.*, 74 N. E. 15, that natural gas, when extracted from the earth and put into a pipe-line, is personal property; and when the pipe-line is opened and the gas extracted and consumed without the knowledge or consent

Gas

CONVERSION (Continued).

of the owner the act constitutes conversion. Compare *Manufacturers' Gas Co.* v. *Indiana, etc., Co.*, 155 Ind. 545.

CORPORATIONS.

Stock Transfer: Contract: Validity

The Supreme Court of Illinois decides in *Kantzler* v. *Benzinger*, 73 N. E. 874, that where a contract for the sale of a majority of the stock of a corporation was entered into by all its stockholders, a provision of the contract that plaintiffs should hold the offices of president, secretary, and treasurer of such corporation for five years from the date of the contract, at a specified salary, was not void as contrary to public policy. It is further held that where, at the time of making a contract for the sale of a majority of the stock of a corporation, there were no stockholders that did not participate in the transaction, and all the corporate debts were paid in full, as provided by the contract, it was immaterial to its validity that a certain provision with reference to retention of control by certain persons as officers might be invalid as against subsequent stockholders and creditors. Compare *Faulds* v. *Yates*, 57 Ill. 416.

DAMAGES.

Crops

In *Candler* v. *Washoe Lake Reservoir and Galena Creek Ditch Co.*, 80 Pac. 751, the Supreme Court of Nevada decides that the measure of damages for the total destruction, or nearly total destruction, of growing crops which would to a reasonable certainty have matured except for defendant's wrongful act, is the value of the probable yield of the crops under proper cultivation when matured and ready for market, less the estimated expense of producing, harvesting, and marketing them, including the expense of irrigation and the value of any portion of the crops that may have been saved. Compare Sedgwick on Damages, Sec. 937, and *Burnett* v. *Great Northern Ry. Co.*, 76 Minn. 465.

DEEDS.

In *Newman* v. *Newman*, 86 S. W. 635, the Court of Civil Appeals of Texas decides that a husband who, actuated by a baseless fear of pending litigation against him, conveys his property to his wife without reserving the beneficial title in himself, and without any undue influence by his wife, and when not subject to any mental incompetency, is not entitled to have the conveyance set aside. Compare *Revira* v. *White*, 94 Texas, 538.

Cancellation

EVIDENCE.

In *Houston and T. C. R. Co.* v. *Anglin*, 86 S. W. 785, the Court of Civil Appeals of Texas decides that a court cannot compel a party to exhibit his person for examination, and the fact that plaintiff, in an action for personal injuries, exhibited to the jury a depression of his chest did not deprive him of the right to refuse to do so again. Compare *Railway Co.* v. *Gready*, 82 S. W. 1061.

Exhibition of Person

The Court of Civil Appeals of Texas decides in *Texas and P. Ry. Co.* v. *Crowley*, 86 S. W. 342, that evidence as to the customary length of time consumed by freight-trains in running between the points on defendant's line over which the shipment was made was admissible to show unnecessary delay.

Carrier's Delay

The Supreme Court of Illinois decides in *Elgin, J. and E. Ry. Co.* v. *Thomas*, 74 N. E. 109, that in an action against a railroad company for wrongful death of a person in charge of a cattle-shipment while walking in defendant's yards at a junction point, for the purpose of proving decedent's rightful presence there, parol evidence that his son found railroad transportation issued to intestate from the point where the cattle was shipped to destination in intestate's satchel, which intestate had in his possession at the time of his death, was not objectionable as an attempt to establish the contents of a written instrument by parol. Compare *Chicago City Ry. Co.* v. *Carroll*, 206 Ill. 318.

Parol

FIRE INSURANCE.

It is decided by the Supreme Court of Illinois in *Phenix Ins. Co. of Brooklyn, N. Y.*, v. *Grove*, 74 N. E. 141, that a provision in a fire policy that it shall be void if the insurer procures other insurance without consent indorsed on the policy may be waived by parol, though the policy also provides that none of its conditions can be waived except by writing endorsed on the policy, since the latter provision is also subject to parol waiver. See also *Phenix Ins. Co.* v. *Johnston*, 143 Ill. 106.

Conditions of Policy

FIXTURES.

A heating-plant, money-drawer, ticket-box, opera-chairs, curtain and scenery, gas-pipes, plumbing, electric switch-board and lights, contained in a mortgaged theatre building are fixtures passing to the purchaser at foreclosure sale: Supreme Court of Washington in *Filley* v. *Christopher*, 80 Pac. 834.

Theatre

FOREIGN CORPORATIONS.

In *People ex rel. Wall and H. St. Realty Co.* v. *Miller*, 73 N. E. 1102, it appeared that the persons who owned a building in the city of New York as tenants in common organized as a corporation under the laws of New Jersey with the object of taking title to the land. The charter authorized unlimited dealings in real estate of every description anywhere in the United States and in all kinds of personal property. The corporation had no surplus and all of its capital was invested in the building and employed in the care and management of the same and in the collection of rents, the net income being devoted to dividends. With three judges dissenting the Court of Appeals of New York decides that such corporation was subject to the statutory license and franchise tax on foreign corporations doing business in the state. Compare *People ex rel. Niagara, etc., Co.* v. *Roberts*, 157 N. Y. 676.

Tax

FRAUD.

The Supreme Court of North Carolina decides in *National Cash Register Co.* v. *Townsend Grocery Store,* 50 S. E. 306, that representations of the seller of a cash register that the same will save the expense of a bookkeeper, and that books can be kept thereupon in half the time that the books could otherwise be kept, and that the machine can be operated by anyone of ordinary intelligence, are not representations as to material facts, and, though false, are not ground for a rescission by the buyer of the contract of sale.

False Representations

FREIGHT.

In *Pine Bluff and A. R. Ry. Co.* v. *McKenzie,* 86 S. W. 834, it appeared that the defendant railway, according to its custom, at plaintiff's request, left two cars on its side-track, agreeing to remove them next day if loaded. The cars were loaded and closed, and notice thereof given to a conductor of defendant's freight-train on the evening of the day they were loaded, and he promised to move them the next morning, but before doing so the cars and contents were destroyed by fire. Under these circumstances the Supreme Court of Arkansas held a complete delivery of the freight contained in the cars to defendant, rendering it liable for the loss, though no bill of lading had been executed. Compare *Railway Co.* v. *Murphy,* 60 Ark. 333.

Delivery to Carrier

INFANTS.

It is decided by the Supreme Court of Arkansas in *Owens* v. *Gunther,* 86 S. W. 851, that an order allowing attorneys a fee from the estate of infants whom they represented in certain litigation should not fix a lien on the infants' property for the amount allowed.

Attorneys' Fees: Lien

JURISDICTION.

In *Andrews* v. *Guayaquil and Q. Ry. Co.,* 60 Atl. 568, it appeared that a plea put in by one P. denied in general terms that the property concerning which relief was sought was located within the state of New Jersey. It admitted (by not denying) that the property in question was capital stock of a New Jersey corporation.

Proceedings in Rem.

JURISDICTION (Continued).

Under these facts the Court of Chancery of New Jersey decides that inasmuch as the situs of the stock was in New Jersey, the New Jersey courts have jurisdiction to proceed against P. in respect of it, that he was a necessary party to the proceeding, and that a decree could be made in respect of the *res* which would, in case he should not appear, bind his interest therein. Compare *Arndt* v. *Griggs*, 134 N. Y. 316.

JURORS.

In *Denham* v. *Washington Water Power Co.*, 80 Pac. 546, the Supreme Court of Washington decides that where in an action for personal injuries a juror testified that he had a prejudice against such cases, but that he knew nothing of the facts in the case and had no predilections concerning it or its merits, and that he would try the case on the evidence, a challenge for cause was properly overruled, though he also stated that it might require some evidence to remove his prejudice. Compare *State* v. *Croney*, 31 Wash. 122.

Prejudice

LAND.

The Court of Civil Appeals of Texas holds in *Texas Cent. R. Co.* v. *Brown*, 86 S. W. 659, that where land is permanently injured by the negligent construction of a railroad embankment causing surface water to overflow the land, the person entitled to the damages is the one who owned and was in possession of the land when the injury was done, and not a subsequent purchaser. Compare *Allen* v. *Macon*, 33 S. E. 696.

Injury: Right of Action

LICENSE.

The Supreme Court of Ohio decides in *Rodefer* v. *Pittsburg O. V. and C. R. Co.*, 74 N. E. 183, that a siding or switch constructed by a railroad company from its road to a manufactory at the expense and over the land of the latter, solely for its benefit, and for the sole purpose of affording it facilities for receiving and shipping freight, and under a written agreement silent as to the

Railroad Siding

LICENSE (Continued).

length of time it is to remain, may not be maintained by the railroad company against the objection of the owner of the manufactory; the agreement, so far as the right of the railroad company is concerned, being merely a license revocable at the option of the licensor or his grantee. See also *White* v. *Manhattan R. R. Co.*, 139 N. Y. 19.

LIVERY-STABLE KEEPERS.

The Supreme Court of Errors of Connecticut decides in *Stanley* v. *Steele*, 60 Atl. 640, that livery-stable keepers, whose business it is to care for the horses and carriages of others and to let their own horses and carriages, either with or without drivers, are not common carriers of passengers, and the rule of law which requires the highest degree of care of a public carrier of passengers is not applicable to them. Compare *Hadley* v. *Cross*, 34 Vt. 586.

Personal Injury

MANDAMUS.

The Supreme Court of Illinois holds in *City of Chicago* v. *People*, 74 N. E. 137, that a city, to avoid a writ of mandamus to make appropriations for a debt on the ground that it is doing all in its power to liquidate it, must by its answer set out clearly and definitely, in detail, all its items of receipts and expenditures.

Answer

MARRIAGE.

In *Avakian* v. *Avakian*, 60 Atl. 521, the Court of Chancery of New Jersey holds that the jurisdiction of the Court of Chancery to annul a marriage for duress is not derived from the divorce statute nor limited by its terms as to residence, etc., but it based on the inherent and general jurisdiction of that court over questions arising out of contract.

Validity: Jurisdiction of Court

It is further decided that the Court of Chancery of the state has jurisdiction to annul on the ground of duress a marriage solemnized in England between a resident of Massachusetts and an Armenian, who at the time the marriage

MARRIAGE (Continued).

was performed was on her way to New Jersey to take up her residence there, where the bill was brought by the latter after having resided a short time in New Jersey and personal service within the state was had on defendant.

MUNICIPAL CORPORATIONS.

Destruction of Shade-Trees

In *Donahue* v. *Keystone Gas Co.*, 73 N. E. 1108, it appeared that an owner of a city lot, having no interest in the bed of the street on which it abutted, had a number of maple-trees, planted by his predecessor in title, about thirty years old, in healthy condition, growing on the margin of the street directly in front of his premises. Defendant gas company permitted, after notice, gas to escape from its pipes into the soil about the roots of the trees, destroying the same. On these facts the Court of Appeals of New York decides, with three judges dissenting, that, as an abutting owner, he had a right in the nature of an easement on the open space of the street, whether he owned the fee or not, authorizing him to recover for such injury. It is further held that though the city might have a right of action for the destruction of the trees, it did not affect the right of the abutting owner to recover, as the damages were distinct, the cause of action of the owner being limited to his special rights, and the cause of action of the city to its general rights. Compare *Edsall* v. *Howell*, 86 Hun. 424.

NEGLIGENCE.

Attempt to Save Life

The interesting question of what risks a person may undertake in an effort to save human life without being guilty of such contributory negligence as to bar his right of recovery arises again in *Ridley* v. *Mobile and O. R. Co.*, 86 S. W. 606, where the Supreme Court of Tennessee decides that one is justified in attempting to save human life when it is imperilled by great danger, and in a sudden emergency, and in such case he need not hesitate until it is too late to make the rescue, but it is sufficient if he act with such care as a reasonably prudent person

NEGLIGENCE (Continued).

would use in such an emergency and under similar circumstances. Compare *Penn Company* v. *Langedoff*, 48 Ohio St. 316, 13 L. R. A. 190.

QUIETING TITLE.

In Rhode Island the statutory law declares that when a testator omits to provide in his will for any of his children they shall take the same share of his estate as they would have if he had died intestate, unless it appears that the omission was intentional. In *Jenks* v. *Jenks*, 60 Atl. 676, it is held by the Supreme Court of this state that a widow, to whom her husband has devised all of his property without making provision for the children, is entitled to maintain a bill for the removal of the cloud from her title by a decree declaring the omission of the testator to provide for the children to have been intentional. Compare *Greene* v. *Greene*, 60 Atl. 675.

Jurisdiction

RAILROADS.

Failure of a railroad company to give warning signals at a private crossing is negligence as to persons using such crossing: Court of Appeals of Kentucky in *Wilson's Adm'rs* v. *Chesapeake and O. Ry. Co.*, 86 S. W. 690.

Private Crossing

The Supreme Court of Arkansas decides in *Ozark and C. Cent. Ry. Co.* v. *Moran Bolt and Nut Mfg. Co.*, 86 S. W. 848, that one who furnishes material which is used in the construction of a railroad has a lien on the road for the price thereof, regardless of whether the material was sold to the railroad or to its contractor.

Construction: Liens

REAL ESTATE.

In *Neppach* v. *Oregon and C. R. Co.*, 80 Pac. 482, the Supreme Court of Oregon decides that while the value of real estate cannot be shown by proving the value of the several constituent elements of value and then adding those together, yet a witness who has given his opinion as to the market value of the land may state the

Value

REAL ESTATE (Continued).

facts upon which his opinion is based, although they involve the character and value of a constituent element of the realty, such as timber. See *Page* v. *Wells*, 37 Mich. 415.

SALES.

The Supreme Court of Washington holds in *Washington Liquor Co.* v. *Shaw*, 80 Pac. 536, that where liquor was sold unconditionally to the keeper of a house of ill fame, mere knowledge on the part of the seller that the liquor was thereafter to be illegally sold by the buyer or applied to some illegal or immoral use, was no defence to an action to recover the price, where it was no part of the contract of sale that the property should be so sold or used, and the seller did not aid or participate in the illegal objects otherwise than by the mere act of making the sale. See *Standard Furniture Co.* v. *Van Alstine*, 22 Wash. 670.

Illegal Purpose

STATUTES.

Where the enacting clause of a statute is general in its language and objects, and a proviso is afterwards introduced, the proviso is considered strictly and takes no case out of the enacting clause which does not fall fairly within its terms: Supreme Court of Arkansas in *Towson* v. *Denson*, 96 S. W. 661.

Construction

The Court of Appeals of Maryland decides in *Commissioners of Allegheny County* v. *Warfield*, 60 Atl. 599, that where the Governor through inadvertence signed a bill, and, on discovering his mistake, immediately, and before the bill had left the Executive Chamber, in which bills were being signed, erased his name, the bill did not thereby become a law, there having been no approval by the Governor as required by the state constitution.

Approval by Governor

TRUST DEEDS.

In *Adams* v. *Carpenter*, 86 S. W. 445, the Supreme Court of Missouri, Division No. 2, decides that where a trust deed provided that on default the property was to be sold by the trustee, or, if he should refuse to act, by the sheriff, the fact that the sale was by the sheriff, without the knowledge of the trustee, who had never been requested to act, did not vitiate the title of one who took in good faith from the purchaser at the trustee's sale. Compare *Curtis* v. *Moore*, 162 Mo. 442.

Foreclosure: Validity

WILLS.

The Appellate Court of Indiana, Division No. 2, decides in *Beatty* v. *Irwin*, 73 N. E. 926, that where a testator devises to his widow certain described realty "now owned by me, and of which I may die seized in fee simple," etc., and declares in a subsequent phrase that such real estate is devised to his wife only so long as she remains unmarried, she takes the fee simple, the qualifying terms amounting to a condition against remarriage. Compare *Coon* v. *Bean*, 69 Ind. 474.

Conditions against Remarriage

In re Seaman's Estate, 80 Pac. 700, it appeared that an alleged will was written on a printed form consisting of four pages folded in the middle, as ordinary legal cap. The dispositive parts of the will were written on the blank portion of the first page and on about one-fourth of the blank portion of the second page. The printed form was prepared to be twice folded from the top to the bottom, and across the face of the paper as so folded and at the top thereof was testator's signature. Under these circumstances the Supreme Court of California decides that the will was invalid, as not fulfilling the requirements that every will other than a nuncupative or olographic will should be subscribed at the end thereof by the testator. Compare *Soward* v. *Soward*, 1. Duv. 126.

Execution at End